came back with a modification which opened up self-petitions which, in my view, is indispensable if we are not to put the immigrants at the mercy of the employer and provide the background for unfair treatment by employers to hang the sword of Damocles over the heads of the undocumented immigrants.

We had a very spirited debate on what to do about English, whether it is the national language or the common and unifying language or how to categorize it.

In my view, there was not a great deal of difference between the amendments offered by Senator INHOFE and Senator SALAZAR. We do know that we are looking for English to be a unifying factor. There is in the law today a series of procedures where other languages are printed for balance in a variety of contexts, but I think ultimately we will work that through on a satisfactory basis.

There was an amendment by Senator KYL to strike the provisions that the green card by H–2C workers would be a path to citizenship. That was a very important amendment not to adopt but to keep that path open consistent with the remainder of the bill.

The amendment to allow undocumented immigrants to receive credit for Social Security even though those payments were made during the time of illegal status, I think, was decided properly, although a close vote, 50 to 49. So that survived.

Yesterday, we rejected the amendment offered by Senator CHAMBLISS on a very complicated matter as to how we deal with the prevailing wage or adverse effect, and I think we are moving forward.

The amendment by the distinguished Senator from California is now on the floor. There is a great deal to recommend in favor of it, in a sense, because it would open up more generously the path to citizenship. But I believe if it were to be adopted it would fracture the very tenuous and delicate coalition which we have on this bill.

I compliment the Senator from California for her work on this bill. She has been a major contributor in the Judiciary Committee generally, and she brought forward the agriculture provisions which have been adopted. She is an effective fighter and, as always, the presenter of important and constructive ideas.

I am constrained to oppose the amendment because I think if we were to allow everybody who has been in this country since January 1, we will destroy the coalition, and we have made a distinction for those here longer than 5 years from those here 2 to 5 years on a principle basis—that those who are here longer and who have roots ought to be accorded greater consideration. We have drawn a line on January 7, 2004, because that was the date the President made a speech on immigration and people who came to the United States in illegal status after that date were on notice, you might say, maybe constructive notice, if they didn't know about it exactly, but they were on notice that they would not be accorded the same status as those who have been here earlier. We have used that as a cutoff date.

My view is that we are working on legislation which is of great importance to our country. We face a real test as to whether we will retain our principle of a welcoming nation to immigrants who earned their status to become citizens.

I think we have worked through the Judiciary Committee where we had a very difficult markup, and one marathon session to meet the timetable established by the majority leader.

The bill has been vigorously debated on both sides. I think there has been some concession of significance from the votes to those who are opposed to having an expansive view of guest workers and an expansive view according to immigrant status to move toward citizenship.

We have a great deal more work to do. I am confident, or optimistic or perhaps even hopeful that we will pass this bill in the Senate, and then we will look forward to the conference with the House of Representatives which has evidenced a very different view. But we have worked through with the House, with Chairman SENSENBRENNER, difficult issues on the PATRIOT Act and other matters, and our bicameral system has worked for America. We will move ahead to forge legislation which is principled but recognizing that there are different points of view, and accommodating as many views as we can. Where there is a basic disagreement, we vote to express the will of the body.

I have spoken a little longer than usual, but I wanted to summarize where we are on the bill.

COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2611, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2611) to provide for comprehensive immigration reform and for other purposes.

Pending:

Feinstein-Harkin amendment No. 4087, to modify the conditions under which aliens who are unlawfully present in the United States are granted legal status.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of debate for up to 60 minutes on amendment No. 4087, with the Senator from California, Mrs. FEINSTEIN, in control of 30 minutes, the Senator from Pennsylvania, Mr. SPECTER, in control of 20 minutes, and the Senator from Massachusetts, Mr. KENNEDY, in control of 10 minutes.

The Senator from California is recognized.

Mrs. FEINSTEIN. I thank the President. I also want to thank the chairman of the committee. He has been a very good chairman. I want him to know that the only reason I offer this amendment is because when we read the bill language of Hagel-Martinez, which has not been voted on by this body, I believe it to be unworkable. I believe it will create another class of illegal immigrants in this country. I believe it is impossible to carry out the deportation requirements of the Hagel-Martinez amendment.

AMENDMENT NO. 4087, AS MODIFIED

I send an amendment to the desk, as modified, on behalf of Senators HARKIN, KENNEDY, REID, KERRY, and myself. This is a modification of my earlier amendment.

The ACTING PRESIDENT pro tempore. Without objection, the amendment is so modified.

(The amendment, No. 4087, as modified, is as follows:

On page 345 strike line 10 and all that follows through page 395, line 23, and insert the following:

Subtitle A—Earned Adjustment of Status

SEC. 601. ORANGE CARD VISA PROGRAM.

(a) SHORT TITLE.—This section may be cited as the ''Orange Card Program''.

(b) EARNED ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended by inserting after section 245A the following:

''SEC. 245B. ACCESS TO EARNED ADJUSTMENT.

''(a) ADJUSTMENT OF STATUS.—

''(1) PRINCIPAL ALIENS.—Subject to subsection (c)(5) and notwithstanding any other provision of law, including section 244(h), the Secretary of Homeland Security shall adjust an alien's status to the status of an alien lawfully admitted for permanent residence, if the alien satisfies the following requirements:

''(A) APPLICATION.—The alien shall file an application establishing eligibility for adjustment of status in accordance with the procedures established under subsection (n) and pay the fine required under subsection (m) and any additional amounts owed under that subsection.

''(B) CONTINUOUS PHYSICAL PRESENCE.—

''(i) IN GENERAL.—The alien shall establish that the alien—

''(I) was physically present in the United States on or before January 1, 2006;

''(II) was not legally present in the United States on or before January 1, 2006, under any classification set forth in section 101(a)(15); and

''(III) did not depart from the United States on or before January 1, 2006, except for brief, casual, and innocent departures.

''(ii) LEGALLY PRESENT.—For purposes of this subparagraph, an alien who has violated any conditions of the alien's visa shall be considered not to be legally present in the United States.

''(C) ADMISSIBLE UNDER IMMIGRATION LAWS.—The alien shall establish that the alien is not inadmissible under section 212(a) except for any provision of that section that is waived under subsection (b) of this section.

''(D) EMPLOYMENT IN THE UNITED STATES.—

''(i) IN GENERAL.—The alien shall—

''(I) submit all documentation of the alien's employment in the United States before January 1, 2006; and

''(II) be employed in the United States for at least 6 years, in the aggregate, after the date of the enactment of the Orange Card Program.

''(ii) EXCEPTIONS.—

''(I) IN GENERAL.—The employment requirement in clause (i) shall be reduced for an individual who—

''(aa) cannot demonstrate employment based on a physical or mental disability or as a result of pregnancy; or

''(bb) is under 18 years of age on the date of the enactment of the Orange Card Program, by a period of time equal to the time period beginning on such date of enactment and ending on the date on which the individual reaches 18 years of age.

''(II) POSTSECONDARY STUDY.—The employment requirements in clause (i) shall be reduced by 1 year for each year of completed full time postsecondary study in the United States during the relevant period.

(III) The employment requirements in clause (i) shall not apply to an alien who is 65 years or older on the date of enactment of this Act.

''(iii) PORTABILITY.—An alien shall not be required to complete the employment requirements in clause (i) with the same employer.

''(iv) EVIDENCE OF EMPLOYMENT.—

''(I) CONCLUSIVE DOCUMENTS.—For purposes of satisfying the requirements in clause (i), the alien shall submit at least 2 of the following documents for each period of employment, which shall be considered conclusive evidence of such employment:

''(aa) Records maintained by the Social Security Administration.

''(bb) Records maintained by an employer, such as pay stubs, time sheets, or employment work verification.

''(cc) Records maintained by the Internal Revenue Service.

''(dd) Records maintained by a union or day labor center.

''(ee) Records maintained by any other government agency, such as worker compensation records, disability records, or business licensing records.

''(II) OTHER DOCUMENTS.—An alien who is unable to submit a document described in subclause (I) may satisfy the requirement in clause (i) by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment for each required period of employment, including—

''(aa) bank records;

''(bb) business records;

''(cc) sworn affidavits from nonrelatives who have direct knowledge of the alien's work, including the name, address, and phone number of the affiant, the nature and duration of the relationship between the affiant and the alien, and other verification information; or

''(dd) remittance records.

''(v) BURDEN OF PROOF.—An alien applying for adjustment of status under this subsection has the burden of proving by a preponderance of the evidence that the alien has satisfied the employment requirements in clause (i).

''(E) PAYMENT OF INCOME TAXES.—The alien shall establish the payment of all Federal and State income taxes owed for employment during the period of employment required under subparagraph (D)(i). The alien may satisfy such requirement by establishing that—

''(i) no such tax liability exists;

''(ii) all outstanding liabilities have been met; or

''(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service and with the department of revenue of each State to which taxes are owed.

''(F) BASIC CITIZENSHIP SKILLS.—

''(i) IN GENERAL.—Except as provided in clause (ii), the alien shall demonstrate that the alien either—

''(I) meets the requirements of section 312(a) (relating to a knowledge and understanding of English and the history and Government of the United States); or

''(II) is satisfactorily pursuing a course of study, recognized by the Secretary of Homeland Security, to achieve such understanding of English and the history and Government of the United States.

''(ii) EXCEPTIONS.—

''(I) MANDATORY.—The requirements of clause (i) shall not apply to any person who is unable to comply with those requirements because of a physical or developmental disability or mental impairment.

''(II) DISCRETIONARY.—The Secretary of Homeland Security may waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older as of the date of the filing of the application for adjustment of status.

''(G) SECURITY AND LAW ENFORCEMENT CLEARANCES.—The alien shall submit fingerprints in accordance with procedures established by the Secretary of Homeland Security. Such fingerprints shall be submitted to relevant Federal agencies to be checked against existing databases for information relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status under this subsection. The relevant Federal agencies shall work to ensure that such clearances are completed within 90 days of the submission of fingerprints. An appeal of a security clearance determination by the Secretary of Homeland Security shall be processed through the Department of Homeland Security.

''(H) MILITARY SELECTIVE SERVICE.—The alien shall establish that if the alien is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) that such alien has registered under that Act.

''(I) ANNUAL REPORTING REQUIREMENT.—

''(i) IN GENERAL.—An alien who has applied for an adjustment of status under this section shall annually submit to the Secretary of Homeland Security the documentation described in clause (ii) and the fee required under subsection (m)(3).

''(ii) DOCUMENTATION.—The documentation submitted under clause (i) shall include evidence of employment described in subparagraph (D)(iv), proof of payment of taxes described in subparagraph (E), and documentation of any criminal conviction or an affidavit stating that the alien has not been convicted of any crime.

''(iii) TERMINATION.—The reporting requirement under this subparagraph shall terminate on the date on which the alien is granted the status of an alien lawfully admitted for permanent residence.

''(J) ADJUSTMENT OF STATUS.—An alien may not adjust to legal permanent residence status under this section until after the earlier of—

''(i) the consideration of all applications filed under section 201, 202, or 203 before the date of enactment of this section; or

''(ii) 8 years after the date of enactment of this section.

''(2) SPOUSES AND CHILDREN.—

''(A) IN GENERAL.—

''(i) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall, if otherwise eligible under subparagraph (B), adjust the status to that of a lawful permanent resident under this section, or provide an immigrant visa to—

''(I) the spouse, or child who was under 21 years of age on the date of enactment of the Orange Card Program, of an alien who adjusts status or is eligible to adjust status to that of a permanent resident under paragraph (1); or

''(II) an alien who, within 5 years preceding the date of the enactment of the Orange Card Program, was the spouse or child of an alien who adjusts status to that of a permanent resident under paragraph (1), if—

''(aa) the termination of the qualifying relationship was connected to domestic violence; or

''(bb) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent who adjusts status or is eligible to adjust status to that of a permanent resident under paragraph (1).

''(ii) APPLICATION OF OTHER LAW.—In acting on applications filed under this paragraph with respect to aliens who have been battered or subjected to extreme cruelty, the Secretary of Homeland Security shall apply the provisions of section 204(a)(1)(J) and the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

''(B) GROUNDS OF INADMISSIBILITY NOT APPLICABLE.—In establishing admissibility to the United States, the spouse or child described in subparagraph (A) shall establish that they are not inadmissible under section 212(a), except for any provision of that section that is waived under subsection (b) of this section.

''(C) SECURITY AND LAW ENFORCEMENT CLEARANCE.—The spouse or child, if that child is 14 years of age or older, described in subparagraph (A) shall submit fingerprints in accordance with procedures established by the Secretary of Homeland Security. Such fingerprints shall be submitted to relevant Federal agencies to be checked against existing databases for information relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status under this subsection. The relevant Federal agencies shall work to ensure that such clearances are completed within 90 days of the submission of fingerprints. An appeal of a denial by the Secretary of Homeland Security shall be processed through the Department of Homeland Security.

''(3) NONAPPLICABILITY OF NUMERICAL LIMITATIONS.—When an alien is granted lawful permanent resident status under this subsection, the number of immigrant visas authorized to be issued under any provision of this Act shall not be reduced.

''(b) GROUNDS OF INADMISSIBILITY.—

''(1) APPLICABLE PROVISIONS.—In the determination of an alien's admissibility under paragraphs (1)(C) and (2) of subsection (a), the following provisions of section 212(a) shall apply and may not be waived by the Secretary of Homeland Security under paragraph (3)(A):

''(A) Paragraph (2) (relating to criminals).

''(B) Paragraph (3) (relating to security and related grounds).

''(C) Subparagraphs (A) and (C) of paragraph (10) (relating to polygamists and child abductors).

''(2) GROUNDS OF INADMISSIBILITY NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7), (9), and (10)(B) of section 212(a) shall not apply to an alien who is applying for adjustment of status under subsection (a).

''(3) WAIVER OF OTHER GROUNDS.—

''(A) IN GENERAL.—Except as provided in paragraph (1), the Secretary of Homeland Security may waive any provision of section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest.

''(B) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the authority of the Secretary of Homeland Security, other than under this subparagraph, to waive the provisions of section 212(a).

''(4) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under subsection (a) by reason of a ground of inadmissibility under section 212(a)(4) if the alien establishes a history of employment in the United States evidencing self-support without public cash assistance.

''(5) SPECIAL RULE FOR INDIVIDUALS WHERE THERE IS NO COMMERCIAL PURPOSE.—An alien is not ineligible for adjustment of status under subsection (a) by reason of a ground of inadmissibility under section 212(a)(6)(E) if the alien establishes that the action referred to in that section was taken for humanitarian purposes, to ensure family unity, or was otherwise in the public interest.

''(6) INELIGIBILITY.—

''(A) IN GENERAL.—An alien is ineligible for adjustment to lawful permanent resident status under this section if—

''(i) the alien has been ordered removed from the United States—

''(I) for overstaying the period of authorized admission under section 217;

''(II) under section 235 or 238; or

''(III) pursuant to a final order of removal under section 240;

''(ii) the alien failed to depart the United States during the period of a voluntary departure order issued under section 240B;

''(iii) the alien is subject to section 241(a)(5);

''(iv) the Secretary of Homeland Security determines that—

''(I) the alien, having been convicted by a final judgment of a serious crime, constitutes a danger to the community of the United States;

''(II) there are reasonable grounds for believing that the alien has committed a serious crime outside the United States prior to the arrival of the alien in the United States; or

''(III) there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

''(v) the alien has been convicted of a felony or 3 or more misdemeanors.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), an alien who has not been ordered removed from the United States shall remain eligible for adjustment to lawful permanent resident status under this section if the alien's ineligibility under subparagraph (A) is solely related to the alien's—

''(i) entry into the United States without inspection;

''(ii) remaining in the United States beyond the period of authorized admission; or

''(iii) failure to maintain legal status while in the United States.

''(C) WAIVER.—The Secretary may, in the Secretary's sole and unreviewable discretion, waive the application of subparagraph (A) if the alien—

''(i) was ordered removed on the basis that the alien—

''(I) entered without inspection;

''(II) failed to maintain status; or

''(III) was ordered removed under 212(a)(6)(C)(i) before April 7, 2006; and

''(ii) demonstrates that—

''(I) the alien did not receive notice of removal proceedings in accordance with paragraph (1) or (2) of section 239(a);

''(II) the alien's failure to appear was due to exceptional circumstances beyond the control of the alien; or

''(III) requiring the alien to depart from the United States would result in extreme hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

''(c) TREATMENT OF APPLICANTS.—

''(1) IN GENERAL.—An alien who establishes the requirements under subsection (a)(1)(B) for including a spouse or child of such alien—

''(A) shall be granted employment authorization upon the filing of an application fee of $1,000 pending final adjudication of the alien's application for adjustment of status;

''(B) shall be granted permission to travel abroad pursuant to regulation pending final adjudication of the alien's application for adjustment of status;

''(C) shall not be detained, determined inadmissible or deportable, or removed pending final adjudication of the alien's application for adjustment of status, unless the alien commits an act which renders the alien ineligible for such adjustment of status; and

''(D) shall not be considered an unauthorized alien as defined in section 274A(h)(3) until such time as employment authorization under subparagraph (A) is denied.

''(2) DOCUMENT OF AUTHORIZATION.—The Secretary of Homeland Security shall provide each alien described in paragraph (1) with a counterfeit-resistant orange card that—

''(A) meets all current requirements established by the Secretary of Homeland Security for travel documents, including the requirements under section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note);

''(B) reflects the benefits and status set forth in paragraph (1); and

''(C) contains a unique number that authorizes card holders who have resided longer in the United States to receive the status of lawful permanent resident before similarly situated card holders whose length of residence in the United States is shorter.

''(3) SECURITY AND LAW ENFORCEMENT CLEARANCE.—Before an alien is granted employment authorization or permission to travel under paragraph (1), the alien shall be required to undergo a name check against existing databases for information relating to criminal, national security, or other law enforcement actions. The relevant Federal agencies shall work to ensure that such name checks are completed not later than 90 days after the date on which the name check is requested.

''(4) TERMINATION OF PROCEEDINGS.—An alien in removal proceedings who establishes prima facie eligibility for adjustment of status under subsection (a) shall be entitled to termination of the proceedings pending the outcome of the alien's application, unless the removal proceedings are based on criminal or national security grounds.

''(5) ADJUSTMENT TO PERMANENT RESIDENCE.—

''(A) IN GENERAL.—The Secretary of Homeland Security shall adjust the status of an alien who satisfies all the requirements under subsection (a) to that of an alien lawfully admitted for permanent residence.

''(B) NONAPPLICABILITY OF NUMERICAL LIMITATIONS.—When an alien is granted lawful permanent resident status under this section, the number of immigrant visas authorized to be issued under any provision of this Act shall not be reduced.

''(d) APPREHENSION BEFORE APPLICATION PERIOD.—The Secretary of Homeland Security shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a) and who can establish prima facie eligibility to have the alien's status adjusted under that subsection (but for the fact that the alien may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 180 days of the application period to complete the filing of an application for adjustment, the alien may not be removed from the United States unless the alien is removed on the basis that the alien has engaged in criminal conduct or is a threat to the national security of the United States.

''(e) CONFIDENTIALITY OF INFORMATION.—

''(1) IN GENERAL.—Except as otherwise provided in this section, no Federal agency or bureau, nor any officer or employee of such agency or bureau, may—

''(A) use the information furnished by the applicant pursuant to an application filed under paragraph (1) or (2) of subsection (a) for any purpose other than to make a determination on the application;

''(B) make any publication through which the information furnished by any particular applicant can be identified; or

''(C) permit anyone other than the sworn officers and employees of such agency, bureau, or approved entity, as approved by the Secretary of Homeland Security, to examine individual applications that have been filed.

''(2) REQUIRED DISCLOSURES.—The Secretary of Homeland Security and the Secretary of State shall provide the information furnished pursuant to an application filed under paragraph (1) or (2) of subsection (a), and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested in writing by such entity.

''(3) CRIMINAL PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be fined not more than $10,000.

''(f) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

''(1) CRIMINAL PENALTY.—

''(A) VIOLATION.—It shall be unlawful for any person to—

''(i) file or assist in filing an application for adjustment of status under this section and knowingly and willfully falsify, conceal, or cover up a material fact or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

''(ii) create or supply a false writing or document for use in making such an application.

''(B) PENALTY.—Any person who violates subparagraph (A) shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

''(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States.

''(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), any alien or other entity (including an employer or union) that submits an employment record that contains incorrect data that the alien used in order to obtain such employment, shall not have violated this subsection.

''(g) INELIGIBILITY FOR PUBLIC BENEFITS.—For purposes of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613), an alien whose status has been adjusted in accordance with subsection (a) shall not be eligible for any Federal means-tested public benefit unless the alien meets the alien eligibility criteria for such benefit under title IV of such Act (8 U.S.C. 1601 et seq.).

''(h) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—

''(1) IN GENERAL.—An alien who is present in the United States and has been ordered excluded, deported, removed, or to depart voluntarily from the United States or is subject to reinstatement of removal under any provision of this Act may, notwithstanding such order, apply for adjustment of status under subsection (a). Such an alien shall not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal or voluntary departure order. If the Secretary of Homeland Security grants the application, the order shall be canceled. If the Secretary of Homeland Security renders a final administrative decision to deny the application, such order shall be effective and enforceable. Nothing in this paragraph shall affect the review or stay of removal under subsection (j).

''(2) STAY OF REMOVAL.—The filing of an application described in paragraph (1) shall stay the removal or detainment of the alien pending final adjudication of the application, unless the removal or detainment of the alien is based on criminal or national security grounds.

''(i) APPLICATION OF OTHER PROVISIONS.—Nothing in this section shall preclude an alien who may be eligible to be granted adjustment of status under subsection (a) from seeking such status under any other provision of law for which the alien may be eligible.

''(j) ADMINISTRATIVE AND JUDICIAL REVIEW.—

''(1) IN GENERAL.—Except as provided in this subsection, there shall be no administrative or judicial review of a determination respecting an application for adjustment of status under subsection (a).

''(2) ADMINISTRATIVE REVIEW.—

''(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary of Homeland Security shall establish an appellate authority to provide for a single level of administrative appellate review of a determination respecting an application for adjustment of status under subsection (a).

''(B) STANDARD FOR REVIEW.—Administrative appellate review referred to in subparagraph (A) shall be based solely upon the administrative record established at the time of the determination on the application and upon the presentation of additional or newly discovered evidence during the time of the pending appeal.

''(3) JUDICIAL REVIEW.—

''(A) DIRECT REVIEW.—A person whose application for adjustment of status under subsection (a) is denied after administrative appellate review under paragraph (2) may seek review of such denial, in accordance with chapter 7 of title 5, United States Code, before the United States district court for the district in which the person resides.

''(B) REVIEW AFTER REMOVAL PROCEEDINGS.—There shall be judicial review in the Federal courts of appeal of the denial of an application for adjustment of status under subsection (a) in conjunction with judicial review of an order of removal, deportation, or exclusion, but only if the validity of the denial has not been upheld in a prior judicial proceeding under subparagraph (A). Notwithstanding any other provision of law, the standard for review of such a denial shall be governed by subparagraph (C).

''(C) STANDARD FOR JUDICIAL REVIEW.—Judicial review of a denial of an application under this section shall be based solely upon the administrative record established at the time of the review. The findings of fact and other determinations contained in the record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record, considered as a whole.

''(4) STAY OF REMOVAL.—Aliens seeking administrative or judicial review under this subsection shall not be removed from the United States until a final decision is rendered establishing ineligibility under this section, unless such removal is based on criminal or national security grounds.

''(k) DISSEMINATION OF INFORMATION ON ADJUSTMENT PROGRAM.—During the 12 months following the issuance of final regulations in accordance with subsection (o), the Secretary of Homeland Security, in cooperation with approved entities, approved by the Secretary of Homeland Security, shall broadly disseminate information respecting adjustment of status under this section and the requirements to be satisfied to obtain such status. The Secretary of Homeland Security shall also disseminate information to employers and labor unions to advise them of the rights and protections available to them and to workers who file applications under this section. Such information shall be broadly disseminated, in the languages spoken by the top 15 source countries of the aliens who would qualify for adjustment of status under this section, including to television, radio, and print media such aliens would have access to.

''(l) EMPLOYER PROTECTIONS.—

''(1) IMMIGRATION STATUS OF ALIEN.—Employers of aliens applying for adjustment of status under this section shall not be subject to civil and criminal tax liability relating directly to the employment of such alien.

''(2) PROVISION OF EMPLOYMENT RECORDS.—Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for adjustment of status under this section or any other application or petition pursuant to other provisions of the immigration laws, shall not be subject to civil and criminal liability pursuant to section 274A for employing such unauthorized aliens.

''(3) APPLICABILITY OF OTHER LAW.—Nothing in this subsection shall be used to shield an employer from liability pursuant to section 274B or any other labor and employment law provisions.

''(m) AUTHORIZATION OF APPROPRIATIONS; FINES; FEES.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security $100,000,000 for fiscal year 2007, which shall remain available until expended, to carry out this section.

''(2) FINE.—An alien who files an application for adjustment of status to lawful permanent residence under this section (except for an alien under 18 years of age) shall pay a fine equal to $1,000.

''(3) FEE.—Annual processing fee of $50.

''(4) IMMIGRATION EXAMINATIONS FEE ACCOUNT.—Of the amounts collected each fiscal year under paragraphs (2) and (3), the Secretary of Homeland Security shall deposit—

''(A) $10,000,000 into the General Fund of the Treasury, until an amount equal to the amount appropriated pursuant to paragraph (1) has been deposited under this subparagraph; and

''(B) the remaining amount into the Immigration Examinations Fee Account established under section 286(m).

''(5) USE OF AMOUNTS COLLECTED.—Of the amounts deposited into the Immigration Examinations Fee Account under paragraph (4)(B)—

''(A) such amounts as may be necessary shall be available, without fiscal year limitation, to—

''(i) the Secretary of Homeland Security to implement this section and to process applications received under this section; and

''(ii) the Secretary of Homeland Security and the Secretary of State for administrative and other expenses incurred in connection with the review of applications filed by immediate relatives of aliens applying for adjustment of status under this section; and

''(B) any amounts not expended under subparagraph (A) shall be available to the Secretary of Homeland Security to improve border security.

''(n) RULEMAKING.—

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of the Orange Card Program, the Secretary of Homeland Security shall issue regulations to implement this section.

''(2) APPLICATION PROCESSING PROCEDURE.—The regulations issued under paragraph (1) shall include a procedure for the orderly, efficient, and effective processing of applications received under this section. Such procedure shall require the Secretary of Homeland Security to—

''(A) permit applications under this section to be filed electronically, to the extent possible; and

''(B) allow for initial registration with fingerprints of applicants to be followed by a personal appointment and completed application.''.

(2) TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 245A the following:

''Sec. 245B. Access to earned adjustment.''.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent to have printed in the RECORD a list of organizations across the country that support this amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ACORN
Acercamiento Hispano de Carolina del Sur
The American-Arab Anti-Discrimination Committee
American Friends Service Committee, Miami
Asian American Justice Center
Asian Americans for Equality
Association of Mexicans in North Carolina (AMEXCAN)
CASA of Maryland, Inc.
Cabrini Immigrant Services, New York City
Center for Community Change
The Center for Justice, Peace and the Environment
Center for Economic Progress
Center for Social Advocacy
Central American Resource Center/CARECEN—L.A.
Centro Campesino Inc.
Church World Service Immigration and Refugee Program
Coalition for Asian American Children and Families (CACF)
Coalition for Humane Immigrant Rights of Los Angeles (CHlRLA)
Coalition for New South Carolinians
Committee for Social Justice in Colombia
Community Wellness Partnership of Pomona
Day without an Immigrant Coalition
Dignity Through Dialogue and Education
Dolores Mission Church, Los Angeles
Eastern Pennsylvania Conference of the United Methodist Church
El Centro Hispanoamericano
El Centro, Inc.
Empire Justice Center
En Camino, Diocese of Toledo
FIRM (Fair Immigration Reform Movement)
Family & Children's Service
Fann Ayisyen Nan Miyami/Haitian Women of Miami, Inc.
The Farmworker Association of Florida Inc.
Farmworkers Association of Florida

Filipno American Human Services, Inc. (FAHSI)
Florida Immigrant Advocacy Center
Florida Immigrant Coalition
Friends and Neighbors of Immigrants
Fuerza Latina
Fundacion Salvadoreña de la Florida
The Gamaliel Foundation
Georgia Association of Latino Elected Officials (GALEO)
Guatemalan Unity Information Agency
Haiti Women of Miami
HIAS and Council Migration Service of Philadelphia
Heartland Alliance
Hebrew Immigrant Aid Society (HIAS)
Hispanic American Association
Hispanic Coalition Corp.
Hispanic Directors Association of New Jersey
Hispanic Federation
Hispanic National Bar Association
Hispanic Women's Organization of Arkansas
Holy Redeemer Lutheran Church, San Jose, CA
Idaho Community Action Network
Illinois Coalition for Immigration and Refugee Rights
Immigration Equality
Immigrant Legal Resource Center
Interfaith Coalition for Immigrant Rights, California
Interfaith Coalition for Worker Justice of South Central Wisconsin (ICWJ)
The Interfaith Council for Religion, Race, Economic and Social Justice, San Jose, CA
Intl. Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Miami
International Immigrants Foundation
International Institute of Rhode Island
International Social Work Organization-University of Maryland School of Social Work
Institute of the Sisters of Mercy of the Americas
Irish American Unity Conference
Irish Apostolate USA
Irish Immigration Center
Irish Immigration Pastoral Center, San Francisco
Irish Lobby for Immigration Reform
ISAIAH, Twin Cities and St. Cloud Regions, MN
Kentucky Coalition for Comprehensive Immigration Reform (KCCIR)
Korean American Resource and Cultural Center, Chicago, IL
Korean Resource Center, Los Angeles, CA
JUNTOS
Jesuit Conference
Jewish Council For Public Affairs
Joseph Law Firm, PC
LULAC
Labor Council for Latin American Advancement, LCLAA
Lahore Foundation, Inc.
Latin American Immigrants Federation Corp.
Latin American Integration Center, New York City
Latino and Latina Roundtable of the San Gabriel Valley and Pomona Valley
Latino Leadership, Inc.
Latinos en Acción de CCI, a chapter of Iowa Citizens For Community Improvement
Law Office of Kimberly Salinas
League of Rural Voters
Lutheran Immigration and Refugee Service (LIRS)
Lutheran Office of Governmental Ministry in New Jersey
MALDEF
Make the Road by Walking
Mary's Center for Maternal and Child Care
Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA)
Medical Mission Sisters' Alliance for Justice
Michigan Organizing Project
Migrant Legal Action Program
Minnesota Advocates for Human Rights
Minnesota Immigrant Freedom Network
The Multi-Cultural Alliance of Prince George's County Inc.
Nashville Area Hispanic Chamber of Commerce
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
National Capital Immigration Coalition (NCIC)
National Council of Jewish Women
National Council of La Raza
National Employment Law Project
National Farm Worker Ministry (NFWM)
National Immigration Forum
National Korean American Service & Education Consortium, Los Angeles, CA
Nationalities Service Center
Nebraska Appleseed Center for Law in the Public Interest
Neighborhood House at The Paul & Sheila Wellstone Center for Community Building
Neighbors Helping Neighbors
NETWORK—A National Catholic Social Justice Lobby
New York Immigration Coalition
Northwest Federation of Community Organizations
ONE Lowell, Lowell, MA
Office for Social Justice, Catholic Archdiocese of St. Paul/Minneapolis
Organization of Chinese Americans (OCA)
Pennsylvania ACORN
Pennsylvania Immigration and Citizenship Coalition (PICC)
People For the American Way (PFAW)
Pilsen Neighbors Community Council
Pineros y Campesinos Unidos del Noroeste (PCUN)
Presbyterian Church (USA), Washington Office
Project HOPE
Project for Pride in Living
Proyecto Pastoral at Dolores Mission
Rockland Immigration Coalition
Rural Coalition/Coalicion Rural
S & G Enterprises
Service Employees International Union (SEIU)
SEIU Florida Healthcare Union
SEIU Local 32BJ
Seattle Irish Immigrant Support Group
Society of Jesus, New York Province
South Asian American Leaders of Tomorrow
Spanish Community of Wallingford, Inc.
Tennessee Immigrant & Refugee Rights Coalition (TIRRC)
UJA-Federation of New York
UN DIA (United Dubuque Immigrant Alliance)
UNITE HERE!
U.S. Committee for Refugees and Immigrants (USCRI)
Unite for Dignity for Immigrant Workers Rights, Inc.
United Church of Christ, Justice and Witness Ministries
United Farm Workers, Miami
United Food and Commercial Workers
United Methodist Church, General Board of Church and Society
United Methodist Hispanic Ministries of North Alabama
Virginia Justice Center for Farm and Immigrant Workers
Washington Citizen Action
We Count!
Westchester Hispanic Coalition
Westside Community Action Network Center (Westside CAN Center)
The Workmen's Circle/Arbeter Ring
YKASEC—Empowering the Korean American Community, New York, NY
Yee & Durkin, LLP

Mrs. FEINSTEIN. Mr. President, let me state why I think the Hagel-Martinez compromise is not workable. The Hagel-Martinez compromise essentially creates three tiers of people in this country in undocumented or illegal status. The first is 6.7 million who have been here more than 5 years; the second is 1.6 million who have been here less than 2 years; and the third is 2.8 million who have been here from 2 to 5 years. People here less than 2 years are subject to immediate deportation. Someone has to find them, go into their workplace or their homes, pick them up, and deport them. Then one has to consider the likelihood that in about 3 days, which is often the case in California, they will come back to their families and their job.

The second is the 2.8 million who must leave, touch back, get in a guest worker program or some other visa program, come back, be in this country, and then, after a period of time, get an employer to sponsor them for a green card or leave. They have a kind of mandatory departure. The guest worker program they would be eligible for is the H–2C program, which we reduced in size from 325,000 to 200,000 in an earlier amendment. The cap of the program is removed for them. Therefore, what is created for this group is a 3 million-person guest worker program, but they cannot earn a path to legalization unless they have an employer who will petition for them. They are limited in the time they can stay in the country, and they must return.

My sense, based on the reality of the largest immigration State in the Union, is that these two tiers in Hagel-Martinez simply will not work. We will have large-scale fraud. The people here slightly less than 2 years will present fraudulent documents to show they have been here for at least 2 years. That is what happens now. There is a wide market in fraudulent documents for the undocumented. And those here less than 5 years will shortly realize that when they have to go back they face a precarious situation of whether they can come back legally. If they can't come back legally, I hazard a guess they will come back and find a way to come back illegally. That is a major problem.

What we have tried to do is create a program, based on McCain-Kennedy, and to an extent on Hagel-Martinez, saying let's be realistic, let's understand what the situation is, that there is no way it is good to create another illegal class of up to 4.4 million people. It does not make sense to spend the time trying to seek out people living clandestinely.

It is much better to create the process for earned legalization which has some meaning and substance, and tests that individuals must pass. So we have created a three-step test for something we would call an orange card. That orange card is like this chart. I picked a

color that had no political connotation. This is a biometric card. It has the personal identifiers. It has the photo. It has the fingerprints. It has a number. Once someone has the orange card, that number, essentially, places them in a line. The line would begin with those people here the longest. They have the lowest numbers. Therefore, when the current green card line of 3.3 million people is expunged—estimated to take 6 to 11 years—the people here the longest in the undocumented status are the first to receive their green card.

In the meantime, this would be the identifier. It is biometric. It enables an individual to move in and out of the country, and the individual reports electronically every year with their work history. They will pay a $50 processing fee. They will pay a total $2,000 fine by the time they reach green card status. They will show they are trying to learn English. They will present their work history. To me, it makes better sense because it is able to be managed.

The Hagel-Martinez amendment is not able to be managed electronically. Therefore, we have 4.4 million people, plus the remainder of the 10 to 12 million people that you have to handle. It is extraordinarily complicated and difficult to do that.

The system was created with good intentions, but I don't believe it is workable. I believe it is subject to fraud. I believe the most difficult part of it is the guest worker part for those who have been here 2 to 5 years. Under Hagel-Martinez, if you are here for 4 years and 9 months, you are 3 months shy of earning legalization. These 3 months cost you the ability to get on a clear path to legalization. With those stakes and no formal documentation that proves when you cross the border, it is only logical to assume that people are going to try to falsify dates in order to qualify for the higher tier. This becomes the bureaucratic nightmare.

Then there is the problem for the 2- to 5-year person, of returning to their own country, getting into a legal program and coming back. I pointed out this makes the guest worker program 3 million people because the 200,000 cap is waived, and therefore the 2.8 million come into that program. That is way too many guest workers for any one time.

Then there is the mandatory departure part of the guest worker program, which essentially says an individual, once in the country, can only be here for 6 years and then must return to their own country unless an employer will sponsor them for a green card. This in itself might appear to be a good thing, but I want to spend a minute on it. You are dependent on your employer for your legal status after that point. This is a huge burden for an employer to bear. It also means that for some employers that may not be good employers, they have a method to exploit an individual by threatening that, unless they do certain things, they will not recommend them for the earned legalization program and for their green card.

We know exploitation does happen. I believe the best step is clearly to put forward a process for everyone in this country, a process that allows you to electronically submit your data, fingerprints, photo, and work history. That is then verified. You then come in. If the verification of your criminal history is adequate, if you pay the fine, and if you are willing to sign up for the orange card, then you receive it. Therefore, you have your biometric identifier, and you can be tracked, if necessary. You are free to leave the country and come back. It is a much sounder path to legalization.

I hope this will be the program that eventually is accepted.

I now yield time to the Senator from Iowa, my distinguished colleague, Mr. HARKIN. I believe he has asked for 5 minutes, or such time as he may consume.

Mr. HARKIN. Up to 10 minutes.

Mrs. FEINSTEIN. I yield up to 10 minutes to the Senator from Iowa.

Mr. HARKIN. I commend and compliment my distinguished colleague from California for presenting this amendment.

I wonder if I might engage in a little colloquy with the author of this amendment. I am proud to join her as a cosponsor because this is the way we have to go.

I was interested in the pie chart that showed the 4.4 million, if I added it correctly, the people here less than 2 years and those here 2 years to 5 years. All of those people have to leave the country?

Mrs. FEINSTEIN. Correct.

Mr. HARKIN. Under Hagel-Martinez?

Mrs. FEINSTEIN. Correct.

Mr. HARKIN. Some will leave and can't come back and some will petition to come back?

Mrs. FEINSTEIN. That is correct.

Mr. HARKIN. I ask my friend, how are they going to deal with families? Many of these people who have been here 2 to 5 years, maybe some less than 2 years, may have gotten married, maybe they brought their spouse along with them, and there are children. I have come across some myself. What will happen to these children who have been born here who are American citizens?

Mrs. FEINSTEIN. That is exactly the point. It is a theoretical plan.

For those who live in big immigration States, who live this problem daily, who see the people and their families—many have bought homes, pay taxes, their children are born here and go to school here—it creates a dynamic which puts the Federal Government again in the place of having to find and deport 1.6 million people; and then if the 2.8 million don't follow the mandatory departure section of the program, they are subject to deportation.

Mr. HARKIN. If I could pursue that a minute longer, again, contemplating the breakup of families, I ask my friend from California, wouldn't that also then make it even more difficult, harder or less likely that these people would come forward. If they know their families may be split up or they might have to leave their children behind and in the care of someone else, why would they come forward?

Mrs. FEINSTEIN. The Senator is exactly right. The dynamic to add to that is, you create a work differential because these people will continue to be clandestine, embedded in the cultures of our country, and find ways to work, and employers, as they have in the past, will hire them. Then we will be faced with carrying out a program that has never worked and that is employer-sanctioned.

Mr. HARKIN. I thank my colleague from California for offering this amendment.

Quite frankly, the amendment offered by Senator FEINSTEIN is the only way I see that we can get out of the mess we are in, so to speak, with all of the undocumented people here, in a way that is pro-family, pro-worker, pro-American, pro-national security.

The amendment offered by the Senator from California meets all of those requirements. It will cost a heck of a lot less, just in terms of dollars.

While I respect the efforts by Senators HAGEL and MARTINEZ and others to craft some sort of compromise, the fact is the Hagel-Martinez bill will be difficult, costly to implement, will tend to separate families and will not be in the best interests of our country.

Quite frankly, as the Senator from California just pointed out, we do not even know if it is workable. How are you going to find these people? As the Senator so aptly pointed out, people who have been here just shy of 2 years, by a month, aren't they going to find some documentation, forging rent receipts, and things like that, to make it seem as though they have been here at least 2 years? And those who have been here 3 to 5 years, won't the same thing happen there also?

The Hagel-Martinez compromise is totally unworkable. By contrast, the approach taken by Senator FEINSTEIN to create a new kind of an orange card—because this is a unique group of people—this orange card is realistic, and it is enforceable, and it is fair. It would require undocumented immigrants, as the Senator said, to register immediately with the Department of Homeland Security. Once they have passed a criminal and national security background check, they could apply for an orange card.

As the Senator said, they would have to pay a $2,000 fine, any back taxes owed, learn English and American civics, and pass extensive criminal and security background checks. Then, after working for at least 6 years, orange card holders could apply for legal permanent residence, but, again, as the

Senator pointed out, they would have to get in back of all the green card holders who are existent right now. So, again, this is a tough approach, but it is workable. It will work. It is fair. And, as I said, it will cost a lot less money and a lot less manpower to implement.

I think, as the Senator from California said, we just have to deal with reality, what is real. Twelve million undocumented immigrants, many who have lived here for many years, have children, family members who are U.S. citizens. They are working. They are contributing to society. They may be undocumented. They may be living in the shadows. But, make no mistake about it, they are de facto members of the American economy and the American society. They are integrated into the fabric of our national life. They are filling jobs that in many cases would otherwise go unfilled.

In essence, they are a part of our American family. And they are not going away. In fact, we would face huge problems if they did. Just last week, I say to my friend from California, a delegation from the Marshalltown, IA, Chamber of Commerce was in town. Several of them pointed out that immigrants play an indispensable role in the Marshalltown economy. As one put it: If you rounded up and kicked out all the immigrants, our city's economy would come to a screeching halt.

I say to my friend from California, I was in Denison, IA, on Friday. There is a Job Corps center there. It is a small-town community in western Iowa. They have a couple meatpacking plants there. So we have a lot of Latinos who come in from Mexico, El Salvador, Honduras, Guatemala, places like that. The mayor took me aside and he said: I want to talk to you about immigration. I didn't know which side he was coming from. He said: I just wanted to let you know how important it is to Denison that you resolve this in a fair and equitable manner. He said: We have people here who have bought homes that were abandoned. People have left town because the town was kind of dying out. They bought these homes. They fixed them up.

Then he told me something very interesting. He said: A lot of Latinos have taken over small businesses on Main Street. They are operating these small businesses that were going out of business. He said: If you want an answer to Wal-Mart, here is your answer to Wal-Mart. He said: They are actually running businesses on Main Street in Denison. He said: I know for a fact that many of them are undocumented aliens. He said: We cannot afford to lose them.

So it is not just in the big cities, I say to my friend—Los Angeles and San Francisco—but in the small towns and small communities of rural Iowa that would be drastically affected by the Hagel-Martinez so-called compromise.

Most of these new immigrants have found work, but they have not found freedom. This spring, at United Trinity Methodist Church in Des Moines, IA, I met with a group of new immigrants, and I asked how many of them were undocumented. I looked around. They didn't know whether to raise their hand, and finally they decided, OK, they would. I would say probably a third of them were undocumented. They are living in the shadows. They live in fear. Many pay taxes. They make Social Security payments, but they receive nothing in return.

They want to become loyal, contributing American citizens, to pursue the American dream. But, instead, they are living an American nightmare of anxiety and exclusion and exploitation. One young girl there was 18 years old, just graduating from high school, who wants to go on to college. They have no money. Her folks work. They have a modest income. We know what college tuitions are like. She came here as a 3-year-old when her folks fled the strife in El Salvador. She is now 18. She is undocumented. She has no papers. She cannot get any loans to go to college. She cannot get any college aid or anything else to help her through. She just wants to be a good American citizen. What about her? What are we going to do about people like that?

So it is time to find a constructive and positive way to bring these people out of the shadows and into the sunshine. The Feinstein amendment does it. It establishes a legal framework, where people can learn English. They have to learn English. They have to pass security background checks, pay the fines and penalties, and can earn the right to eventually become U.S. citizens.

The ACTING PRESIDENT pro tempore. The Senator has used 10 minutes.

Mrs. FEINSTEIN. Mr. President, I yield 2 additional minutes to the Senator.

Mr. HARKIN. I thank my friend from California.

Again, the orange card program will increase participation by decreasing fear. More people will come forward because fewer families will be separated. They will become full participants. It is pro-family, pro-work, pro-American, pro-national security.

Let me close by saying one personal thing. My mother came to this country as an immigrant. I have the documentation when she came to this country. Was she legal? Well, I don't know. She came on a boat with a lot of other people—steerage class. They landed in Boston. They could not get into New York because of a storm. They landed in Boston. She had $7 in her pocket and a one-way train ticket to Des Moines, IA. Yet she became a fully contributing member of our American community. Later on she became a citizen.

So when I see our new immigrants, and I look into their face, I see the face of my mother. Why do we have an immigration problem in America? Because people want to come here. They want to work. They love America. They love our freedoms. They love our society and the opportunities that it presents.

This is not the time to go to some convoluted thing such as the Hagel-Martinez amendment, which is going to make the mess even messier. It is going to make it even worse. Let's clear it up once and for all, in a fair and equitable manner. And the only way to do that, I submit, is with the Feinstein amendment.

I thank the Senator from California for coming up with this amendment. I am proud to be her cosponsor.

Mrs. FEINSTEIN. Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 6½ minutes remaining.

Mrs. FEINSTEIN. Mr. President, I would like to reserve the remainder of my time. But I would like to also thank the Senator from Iowa. I think he showed, particularly speaking from the heartland of our country—a much smaller State than California—how much a local economy depends on this workforce. I think that is really important to understand.

I remember speaking—and I would like the Senator to know this—with Doris Meissner. She was the head of the U.S. Immigration and Naturalization Service, and I think a very good commissioner. She said: Whatever you do, make it simple. Make it enforceable. That is the key where we go astray with this because you cannot enforce it, basically. Good luck finding all of these people subject to immediate deportation. It is impossible. You cannot deport 1.6 million people. And then to expect the other 2.8 million are going to go home and touchback within 3 years is an unrealistic expectation.

So I hope somehow people will actually read the bill and understand the devil is in details of the language as to whether it can be carried out. I think the Senator from Iowa said it very eloquently, and I thank him for that.

I reserve the remainder of my time.

Mr. President, I ask unanimous consent that the time begin to run on the other side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, may I be clear as to what I just asked unanimous consent for: that the Presiding Officer allows the time against the amendment to run, and I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. FEINSTEIN. I thank the Chair. I appreciate it.

Mrs. BOXER. Mr. President, currently, 10 to 12 million workers are in this country illegally living in the shadows. Of those, approximately 24 percent or 2.5 to 3 million undocumented immigrants are living in California.

Many of these people are longtime residents, hard workers, and with

American-born children. They are the parents of children in your school. They are members of your community whom you know and respect.

Any comprehensive immigration reform bill must address the plight of undocumented workers currently in the country. Unfortunately, the current provision in the bill is not rational and could leave millions of individuals without relief and forced to hide.

Under the three-tier process created by the Hagel-Martinez compromise, undocumented immigrants here less than 2 years are subject to deportation, and those here from 2 to 5 years must return to their country and seek reentry under a guest/worker program.

It is estimated that these tiers would apply to nearly 5 million people—that means approximately a million residents of California would either face voluntary departure or deportation.

Families would be broken apart and industries disrupted as workers are forced to leave or go into hiding. California cannot afford and most of its residents do not support the convoluted Hagel-Martinez approach.

That is why I was pleased that my colleague, Senator FEINSTEIN, has proposed a much more practical and humane approach in her orange card program.

Under the program, all undocumented immigrants who are in the United Stats as of January 1, 2006, would be eligible to get on a path to legality. They would be required to pass criminal and national security background checks, demonstrate an understanding of English and U.S. history and Government, have paid their back taxes and pay a $2,000 fine.

Moreover, orange card holders would have a continuing obligation to work, pay their taxes, and not to engage in criminal activity.

The Feinstein orange card program establishes a realistic approach to dealing with the 10 to 12 million undocumented workers currently in the country. In conjunction with her AgJOBS amendment, Senator FEINSTEIN has addressed two of the most important aspects of the comprehensive immigration reform bill.

I urge my colleagues to vote for the Feinstein amendment. It is a workable solution to a difficult problem.

The PRESIDING OFFICER (Mr. DEMINT). The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I want to speak briefly on the overall bill and the progress we are making to date. And then I want to address, briefly, the Feinstein amendment.

I have great regard for the Senator from California. She is one of the top authorities in the Senate on immigration. She has dealt with this topic for many years, and in a very practical way she has dealt with it, and in a very knowledgeable way she has dealt with it.

We are making great progress on getting a comprehensive, bipartisan immigration bill through the U.S. Senate. Everybody is not going to agree with this bill at the end of the day, but it has been a delight to see the body work and to see us go on amendments—a Republican amendment might pass or fail, a Democrat amendment might pass or fail. We are really legislating and building a coalition, and I think building a vote total that, at the end of the day, will pass a strong bill. I think that is to the credit of the country, and I think it is to the credit of the body.

I oppose the Feinstein amendment, even though I have great respect for my colleague from California and her knowledge and ability and the practical impact of this on her State. I have opposition to it because I think it slows us down and possibly really disrupts us from being able to get a comprehensive bill through the body. We have worked to craft a delicate compromise that—it is my hope—could pass substantially in cloture, get well over 60 votes on final passage.

A key part of that coalition and building has been the Hagel-Martinez compromise, that makes the distinctions between if you have been here more than 5 years or if you have been here less than 2 years. That has been something where a number of people have said: OK, it is difficult to work in practice, but it makes some sense to me. It also makes some sense on the amount of roots you have put into this country. It makes some sense to me about if you have just come in the last 2 years and you are just trying to jump in over the line as things change.

If you break that compromise, I think you break the momentum in passing the bill, and I would not doubt that you break the ability for us to pass the bill. I think the Senator from California has some real issues that she raises. I think they are important issues she raises. I think there are key things for us to consider. But at the end of the day, I think it causes the bill to fail, and I do not think that is a useful thing for us to do—having invested the quantity of time we have in this bill, having the importance of this bill, and having it as the No. 1 topic across the country—for us now to adopt an amendment that I believe has the clear possibility of failing the whole bill and pulling the whole bill under.

For those reasons, with high regard for the Senator from California and her work, and with real recognition of the practicality of the issues she is dealing with, I oppose the Feinstein amendment. I hope that my colleagues will oppose it, and we can move forward toward closing the debate with a strong vote on final passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MARTINEZ. Mr. President, I would like to speak for 5 minutes in opposition to the Feinstein amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MARTINEZ. Following on the remarks of the Senator from Kansas, I have to agree with an awful lot of what he said. We came to this bill in a situation where it was a good concept. It had some obvious, positive qualities to it, but it was also a bill that was not gaining the favor of the vast majority of the Members of the Senate. In order for it to be successful, we had to tweak it. We had to find a way in which we could thread the needle, strike a balance, a way in which we could somehow bring more people to the table in understanding what it is that we were trying to do.

We came together and found a way of doing so by simply not treating everyone who was here the same. We talk about a group of 11 million people in our country illegally today. It was apparent that all of those people were not in the same situation. Some have been here for a number of years, well established, sometimes owning a home, certainly having a steady job, children who were probably by now United States citizens, having been born here. For the sake of family unity, we felt it was important to treat people who had been here a longer period of time differently than more recent arrivals.

Senator HAGEL and I came up with a concept of having a 5-year dividing line where those who have been here more than 5 years would be treated one way and those who had been here less would be treated a slightly different way. The requirement was that those who had been here less than 5 years would be divided in two different ways—those who have been here less than 5 years who might have come here with the expectation that there would be some immigration bill. The date was selected around the time the President first spoke on this issue of comprehensive reform. We settled on the idea that those who had been here 2 years or less would not be able to benefit from this bill, but that those who had been here between 2 and 5 years should be given an opportunity. We would require that they reenter the country, that they would have a legal entry into the country, but understanding that all the other categories or steps that were appropriate for those who had been here 5 years they would also have to meet before obtaining a path to regularization, to being here legally, and then, ultimately, to live the American dream to its fullest extent by becoming citizens of this country.

Not every immigrant who crossed the southern border intended to become an American. We could not treat everyone the same. People who have been here 10, 15 years certainly have a very different situation than those who have been here 3 years. A lot of times single men will come to work for a period of time, having no intention of being here for an extended visit.

At the end of the day, what we have to understand is that we are now at the crossroads where this bill is about to be completed. This bill is moving along in a very positive way with support from both sides of the aisle, which

makes an even stronger statement. As we move forward to do that, this amendment will take us a step back. This would bring us back to a time when we didn't have consensus, to a time when we were not all pulling in the same direction, and to a time when we didn't have what we have demonstrated, the support of as many as 66 Members of this body to defeat some of these amendments that would have taken the bill in a different direction, that would have taken us from comprehensive reform to something different.

So for those folks who have been here 2 to 5 years, we want to give them a path to regularizing themselves in this country. But also we have to understand that their situation is different than those who have been here for a long time.

I appreciate the effort of the Senator from California to do what I know in her heart she believes is fair. I do understand the difficulties. I don't want to be Pollyannish about it. This is a very difficult concept to implement. When the time comes, we must try. We are putting a lot of employment enforcement into this bill which will make it possible for this to be worked out. Without any idea that this is going to be easy to do, I do believe that there is a practical reason. It was a way for us to reach a resolution of how to deal with this country's population of illegal immigrants, which is a group of people the size of those people who live in the State of Pennsylvania.

I believe with ample protections to all, understanding the difficulties that may come about in the implementation, that we have to go forward and move ahead with the concept that has brought this body together, the concept that had the favor of the President. The President, when he spoke on this a week ago, clearly stated that, in fact, he favored the idea of creating a difference between the groups of people as they have arrived in this country and the length of time they have been here.

I urge Members of the Senate not to support the current amendment but to stick with the concept that has worked so far, the concept that has pulled us together. I believe if we do that, we will be very close to final resolution of this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent to add the names of Senators DURBIN and OBAMA as cosponsors of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes.

Mrs. FEINSTEIN. My understanding is Senator KENNEDY has 10 minutes. Would the Senator like to use that time now?

Mr. KENNEDY. That would be fine.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the Senator from California for her amendment. It does, for the reasons she has outlined and that I will address briefly, seem to be a constructive and positive way to go. It effectively moves us back to what was originally the legislation that Senator MCCAIN and I introduced. I was enthusiastically in support of it because it achieves what we are trying to do in terms of earned legalization. In terms of simplicity and legality for those people who are here, that is the preferable way to go.

Since that time, as the Senate has worked its will, the Martinez-Hagel amendment has come in and, as has been outlined, establishes a tier system. It recognizes that those who are here for over 5 years will be able to have the earned legalization which many of us support—strong bipartisan support. Those who are here for just 2 years will be deported, and those from 2 to 5 will have to return and follow a different pathway in terms of earning citizenship. That is administratively more complicated and difficult and puts additional burdens on Homeland Security.

One of the basic concepts behind the legislation was to try to move people out of the shadows. This is going to move us back into creating a situation where a number of people will be back in the shadows. It does move us in a direction that I would not have hoped we would move. But frankly, this is the legislative process. The legislative process has brought us to where we are today. The underlying legislation is a good product and an important product which will mean a significant and important change in the opening of opportunity for people who are here, who want to work hard and pay a fine, pay their back taxes, play by the rules and become a part of the American dream.

I am enthusiastic for the underlying legislation which includes the Hagel-Martinez amendment. I will say that the Feinstein amendment is basically, in fact, what Senator MCCAIN and I had originally hoped for. It is difficult for someone like myself to argue against it. It makes sense. But as legislative proceedings go, at least as far as I am concerned, you are sort of stuck with where you are in terms of the process.

I thank the Senator from California for again raising an issue which is a matter of enormous importance. And her reasons are excellent, as she outlined in her comments. I am sympathetic to that. If the Senator's amendment is not successful, we still have a very strong bipartisan document which will deserve to move ahead in this process.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, how much time remains under my control?

The PRESIDING OFFICER. The Senator has 9 minutes.

Mr. SPECTER. I yield 4 minutes to the Senator from Texas, Mr. CORNYN.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I rise to oppose the pending amendment. It is interesting how causes line up. I find myself critical of the Hagel-Martinez compromise. I also find myself in agreement with the diagnosis of the Senator from California that the tiered method of trying to divide up the undocumented population will result in rampant fraud, just as it did in the post-1986 amnesty. But while I agree with her on the diagnosis, I don't agree with her prescription. The prescription, the alleged cure for the diagnosis, is that basically we throw up our hands and say that we cannot enforce the law. We can't secure our borders. We can't verify eligibility to work at the work site. We can't sanction employers who cheat. So we have to let anyone and everyone who has come to the United States, either in violation of the law or legally and overstayed, get basically the best gift that America can confer, and that is legal permanent residency and American citizenship and to jump in line ahead of those who have waited patiently outside the country and revisit the mistakes of 1986 when amnesty was tried.

I have two articles from the New York Times, one dated June 18, 1989 and one dated November 12, 1989. I ask unanimous consent that these be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibits 1 and 2.)

Mr. CORNYN. The June 18 article says:

> The most sweeping effort to halt illegal immigration in American history, the 1986 overhaul of immigration law, may have cut the flow of illegal aliens less than expected and may have actually encouraged unlawful entry in several ways.

It quotes a professor Wayne Cornelius, director of the Center for U.S.-Mexican Studies at the University of California in San Diego:

> We found no evidence that the 1986 immigration law has shut off the flow of new undocumented migrants.

The article, dated November 12, 1989, includes a quote from the junior Senator from New York, who was then serving in the House of Representatives. It says:

> Representative Charles E. Schumer, a Brooklyn Democrat who was an author of this Special Agricultural Worker provision, said that in retrospect the program seemed ''too open'' and susceptible of fraud. But he argued that the budget decisions had made the battle to combat fraud more difficult.

In other words, alluding to the fact that notwithstanding the policy decisions made by Congress in 1986, that, in fact, it was the failure to actually finance and implement the policy for work site verification and employer

sanctions that contributed to the ineffectiveness of the 1986 amnesty.

I hope we will learn from the mistakes of the past and are not condemned to relive them with this bill. But I do agree with my colleagues, Senator KENNEDY, Senator SPECTER, the chairman of the Judiciary Committee, Senator MARTINEZ and others, that while the Senator from California is absolutely correct in her diagnosis, this sets us up for a repeat of massive fraud. The prescription she recommends is not well advised.

I yield the floor.

EXHIBIT 1

[From the New York Times, June 18, 1989]

1986 AMNESTY LAW IS SEEN AS FAILING TO SLOW ALIEN TIDE

(By Roberto Suro)

HOUSTON, June 17.—The most sweeping effort to halt illegal immigration in American history, the 1986 overhaul of immigration law, may have cut the flow of illegal aliens less than expected and may have actually encouraged unlawful entry in several ways.

Two years after it began to take effect, experts around the country are starting to draw conclusions about the law's effect. As thousands of people continue to enter the country illegally every day, the first arguments are being entered in a debate over whether the legislation has achieved its goals, and whether it ever will.

Some in Congress seek more effective enforcement of the law; others want to focus on the poverty and turmoil in the third world that force people out of their homelands. Meanwhile, the Immigration and Naturalization Service has proclaimed the law a clear success, and the Bush Administration has yet to put its own stamp on immigration policy.

''We have found no evidence that the 1986 immigration law has shut off the flow of new undocumented migrants,'' said Wayne Cornelius, director of the Center for U.S.-Mexican Studies at the University of California at San Diego.

A DECADE OF STUDY

The Immigration Reform and Control Act of 1986, whose measures began to take effect in May 1987, was the first nationwide response to a wave of illegal immigration that began in the mid-1960's and created a resident population of illegal aliens variously estimated between 6 million and 12 million people.

After a decade of study and argument in Washington, the 1986 law emerged as a mixture of humanitarian and restrictive measures. Unlike the two previous efforts to counter similar waves of illegal immigration in the 1930's and 1950's, there was no resort to mass deportations. The law offered legal status to illegal aliens who had lived in the United States continuously since Jan. 1, 1982, and it imposed penalties on employers who knowingly hired illegal aliens. It also allowed migrant workers to enter the United States during harvest season.

''The legislation bought time for everyone and made the problem more manageable for a while,'' said Leonel J. Castillo, who was Commissioner of Immigration and Naturalization during the Carter Administration and is now president of Houston International University. ''It seems, however, that time has passed more quickly than expected, and so it is important to see where we stand, because I think we will be dealing with the issue again soon.''

TORRENTS OF PEOPLE

According to indicators used by the immigration service to estimate traffic across the southern border, this year there will be 1.7 million to 2.5 million crossings. The most recent statistics signal that the flow may have increased in April and May.

Separate surveys of illegal aliens conducted by researchers based in Mexico, Texas and California all found that immigration by first-time travelers, as against those who had previously been to the United States, has been on the rise for at least a year. Experts also agree that the flow had dropped off through most of 1987. As a result, immigration experts say they have identified a ''wait and see'' response to the law among potential immigrants that may be producing a new wave of illegal immigration.

Doris Meissner, an expert on immigration for the Carnegie Endowment, a Washington research organization, said, ''There is evidence that many potential immigrants waited for a while to see how the law worked and have since begun moving again. If so, we should see the flow across the border accelerating any day.''

A MAGNET OF SORTS

The 1986 law allowed 3.1 million previously illegal aliens to obtain legal status here. Recent studies show that many thousands of people crossed the border surreptitiously to take advantage of the program, some of them with falsified documents and personal histories. The mass of newly legalized immigrants is also acting as a magnet for illegal aliens who want to come to the United States to join friends and relatives.

A plan to strengthen the Border Patrol was never fully carried out, and experts reach widely differing verdicts on the effectiveness of the sanctions against employers who hire illegal aliens.

Representative Charles E. Schumer, the New York Democrat who was instrumental in shaping the law's final compromises, said, ''The legislation has had some effect but not close to what it should have been.'' He complained that the Reagan Administration favored passage of the law but never gave the immigration service the resources to enforce it. ''So far, the law really has not been given a fair test,'' he said.

The current debate over immigration policy is likely to affect not only future law but also foreign policy. After hearings last month on the law's effect, Representative Bruce A. Morrison, a Connecticut Democrat who is chairman of the House Judiciary Committee's Subcommittee on Immigration, Refugees and International Law, said, ''Looking at what's happened the past few years it is increasingly obvious that most of the reasons for illegal immigration are in the countries people are leaving, and that unless those conditions change we may be able to reduce the flow somewhat, but no enforcement scheme will stop the tide.''

A LONELY ASSERTION

At those hearings Alan C. Nelson, Commissioner of the I.N.S., argued that a steady decline in the number of people apprehended trying to cross the border ''continues to demonstrate that the law is working and employer sanctions are having the intended effect of reducing illegal immigration.''

But the immigration service is now virtually alone in asserting that the sanctions have substantially cut the flow of illegal immigrants. Mr. Nelson has said repeatedly that the number of people apprehended on the border has dropped at a rate of 40 percent a year since the law went into effect. But many scholars dispute Mr. Nelson's statistics. Some researchers believe sanctions on employers have cut the flow, but not by 40 percent, and other experts argue the sanctions have had no effect at all.

The effects of the law are illustrated in the experiences of two recent illegal immigrants.

A 30-year-old woman from El Salvador said that in February 1988 she left home to live illegally in Texas in part because ''my cousin got papers under the amnesty, and so she was able to help me with money and a place to stay and generally in getting around.'' But as a result of the law, she said, ''there is no way to get a good job, because they always ask for your papers.''

The woman, a secretary in El Salvador, cleans houses in Houston, and although she would like better work here, she said she had no desire to return to the poverty and political violence of her homeland. ''Yes,'' she said, ''it is more difficult to get here and earn money now, but people still do it.'' Like other illegal aliens interviewed, she asked not to be identified.

A FAMILY ASUNDER

In the case of another woman from El Salvador, the law had contradictory effects. She arrived here in 1981, qualifying for the amnesty, but her five children, now 10 to 18 years old, arrived too late to be legalized. ''It is a great worry for me,'' she said, ''because my two oldest have graduated from American high school. Their home is with me here, but they cannot get real jobs. What is their future?'' According to the immigration service, 3.5 million to 4 million illegal aliens live in the United States on an established basis, as against 6.5 million to 7 million before passage of the 1986 law.

The drop is accounted for by the number of applicants for the amnesty programs. In effect, the amnesty divided illegal immigrants into those who were suddenly legalized and those who were not, but it did not physically separate these people.

The immigration service expects that a vast majority of amnesty applicants will receive permanent status as legal residents. If they then become citizens after a five-year waiting period, they will be able to get legal status for their spouses and children.

THE MEN WERE FIRST

In the meantime, however, the law has created a new and growing category of illegal alien: the relatives of amnesty applicants. Noting that nearly 70 percent of the amnesty applicants are men, Nestor Rodriguez, a sociologist at the University of Houston, said: ''Usually, the men were the first to migrate, and so more of them qualified for the amnesty. Many woman and children who followed along later did not qualify, and certainly the men who were here alone and got papers are now bringing in their families illegally.''

The effect of the amnesty on illegal immigration goes beyond relatives, however.

''Illegal immigrants have a long history of following well-established routes,'' said Mr. Castillo, ''and the amnesty program gave those routes a little more solidity. Now, instead of relying on other illegals, a new arrival is likely to know people here who are legal and can offer help with all kinds of things. It's my guess that it will take a generation to break those ties.''

Mr. Cornelius of the University of California at San Diego conducted extensive surveys of three rural Mexican communities and has concluded, ''There has been no significant return flow of illegals who suddenly found themselves jobless in the United States.'' In the short term at least, he said, the 1986 law ''may have kept more Mexicans in the United States than it has kept out'' because it granted some kind of amnesty to about 3.1 million people.

Although immigration experts agree that the prohibition on hiring undocumented workers has made it more difficult for illegal aliens to find work here, they differ widely on how much the sanctions on employers have reduced the flow across the border.

ARREST RATES ARE DEBATED

Much of the debate over the rate of illegal immigration centers on statistics for the apprehension of aliens along the Southern border because the immigration service uses these figures to support its assertion that the sanctions have been effective.

Almost all experts dismiss the immigration service view that proof of decreased flow lies in the 40 percent drop in apprehensions each year since 1986. The agency's critics say the number of Border Patrol agents assigned to watch the border also decreased markedly in that time, and so fewer apprehensions were inevitable.

Also, it is argued that since 1986 the agents remaining on the border have spent more time tracking down drug smugglers, another reason why a decline in apprehension would not necessarily mean there was a drop in the flow of illegal aliens. Yet other researchers insist that a substantial part of the decline in apprehensions is explained by the fact that most of the 3.1 million amnesty applicants can move across the border as they have for years but do it legally.

Chart of breakdown of legalization applicants and agricultural workers by gender, type of work, age, and state they applied in.

EXHIBIT 2

[From the New York Times, Nov. 12, 1989]

MIGRANTS' FALSE CLAIMS: FRAUD ON A HUGE SCALE

(By Roberto Suro)

HOUSTON, Nov. 11, 1989.—In one of the most extensive immigration frauds ever perpetrated against the United States Government, thousands of people who falsified amnesty applications will begin to acquire permanent resident status next month under the 1986 immigration law.

More than 1.3 million illegal aliens applied to become legal immigrants under a one-time amnesty for farm workers. The program was expected to accommodate only 250,000 aliens when Congress enacted it as a politically critical part of a sweeping package of changes in immigration law.

Now a variety of estimates by Federal officials and immigration experts place the number of fraudulent applications at somewhere between 250,000 and 650,000.

The Immigration and Naturalization Service has identified 398,000 cases of possible fraud in the program, but the agency admits that it lacks both the manpower and the money to prosecute individual applicants. The agency is to begin issuing permanent resident status to amnesty applicants on Dec. 1, and officials said they were approving 94 percent of the applicants over all.

Evidence of vast abuse of the farm worker amnesty program has already led to important changes in the way immigration policies are conceived in Congress. For example, recent legislation to aid immigration by refugees from the Soviet Union was modified specifically to avoid the uncontrolled influx that has occurred under the agricultural amnesty program.

Supporters of the farm worker amnesty argue that it accomplished its principal aim of insuring the nation a cheap, reliable and legal supply of farm workers and that it made an inadvertent but important contribution in legitimizing a large part of the nation's illegal alien population.

Critics point to cases like that of Larry and Sharon Marval of Newark. Last year they pleaded guilty to immigration fraud charges after immigration service investigators alleged that the Marvals were part of an operation that helped about 1,000 aliens acquire amnesty with falsified documents showing they had all worked on a mere 30 acres of farmland.

The amnesty for farm workers was a last-minute addition to the Immigration Reform and Control Act of 1986, which sought to halt illegal immigration with a two-part strategy. Under a general amnesty, illegal aliens who could prove they had lived in the United States since before Jan. 1, 1982, were given the chance to leave their underground existence and begin a process leading to permanent resident status. And to stem further illegal immigration, the employment of illegal aliens was made a crime.

The agricultural amnesty program was adopted at the insistence of politically powerful fruit and vegetable growers in California and Texas who wanted to protect their labor force. In several respects, the provisions for the program were much less strict than the general amnesty program, which drew 1.7 million applicants. Instead of having to document nearly five years of continuous residence, most agricultural worker applicants had to show only that they had done 90 days of farm work between May 1, 1985, and May 1, 1986.

Representative Charles E. Schumer, a Brooklyn Democrat who was an author of this Special Agricultural Worker provision, said that in retrospect the program seemed ''too open'' and susceptible to fraud. But he argued that budget decisions had made the battle to combat fraud more difficult.

''There has not been enough diligence in tracking down the fraud,'' he said, ''because funding for the I.N.S. has been cut by the White House in each of the last three budgets, even though everyone agreed when the bill passed that greater I.N.S. manpower was essential to make it work.''

Congress rarely raises the immigration service budget above Administration requests.

Aside from its budget problems, the immigration service has repeatedly come under fire this year in Congress and in an audit by the Justice Department for what was termed mismanagement and administrative inefficiency.

John F. Shaw, Assistant Immigration Commissioner, agreed that ''manpower restrictions'' at the agency were a major factor in the fraud in the agricultural amnesty program. He said much of the fraud ''shot through a window of opportunity'' when the agency was frantically trying to deal with many new burdens of the 1986 immigration law.

Mr. Shaw said law-enforcement efforts had been limited to the people who sold false documents to applicants for the farm worker amnesty. The immigration service has made 844 arrests and won 413 convictions in cases alleging fraud in the amnesty program. The people involved ranged from notaries public to field crew leaders. ''It was a cottage industry,'' Mr. Shaw said.

The immigration service can revoke legal status if it finds the applicant committed fraud, but even this effort is limited. Only applications that appear linked to a fraud conspiracy are held for review, as when an unusually large number of applicants assert that they have worked in same place. Some 398,000 aliens have fallen into this category since the application period ended last Nov. 30, but it is likely that many of them will get resident status.

Mr. Shaw said the fraud conspiracies often involved farms that actually did employ some migrant labor. So it is frequently impossible to separate legitimate from illicit claims.

Given the limited law-enforcement effort, no precise count of fraud in the agricultural amnesty program is possible. But some rough estimates are possible based on information from the aliens themselves. An extensive survey conducted in three rural Mexican communities by the Center for U.S.-Mexican Studies at the University of California in San Diego found that only 72 percent of those who identified themselves as applicants for farm worker amnesty had work histories that qualified them for the program. A similar survey conducted by Mexican researchers in Jalisco in central Mexico found that only 59 percent qualified.

But fraud alone does not explain why the program produced more than five times the applicants Congress expected. Frank D. Bean, co-director of the Program for Research on Immigration Policy at the Urban Institute in Washington, said the miscalculation in the Special Agricultural Worker program reflected longstanding difficulties in tracking the number of temporary illegal migrants from Mexico.

''It is at least plausible that a very large percentage of the S.A.W. applicants had done agricultural work in the U.S. even if they did not meet the specific time requirements of the amnesty,'' Mr. Bean said.

Mr. Shaw of the immigration service, and other critics of the law, believe there were more fundamental flaws. ''It was a weak program and it was poorly articulated in the law,'' he said.

Unlike almost all other immigration programs, which put the burden of proof applicant, the farm amnesty put the burden on the Government. Consequently, aliens with even the most rudimentary documentation cannot be rejected unless the Government can prove their claims are false.

Stephen Rosenbaum, staff attorney for California Rural Legal Assistance, a nonprofit service organization for farm workers, argued that there was no other way to structure an immigration program for an occupation ''that does not produce a paper trail.'' He noted that farm workers are paid in cash and neither the employers nor the workers keep detailed records.

''You can argue the wisdom of a farm worker amnesty, but if you have one, you have to recognize the immense logistical problems involved in producing evidence,'' he said.

The immigration service at first tried to apply the stringent practices common to other immigration programs, like rejecting applicants with little explanation when their documents were suspect. But three lawsuits brought in Florida, Texas and California over the last two years forced the agency to follow the broader standards mandated by Congress.

The burden-of-proof issue arose again earlier this year when the House of Representatives approved legislation that would have made any person who could prove Soviet citizenship eligible for political refugee status.

A legislator with a powerful role on immigration policy, Senator Alan K. Simpson, Republican of Wyoming, eliminated the provision because of concerns raised by the farm worker amnesty program, an aide said. Mr. Simpson, who is on the Senate Judiciary Subcommittee on Immigration and Refugee Affairs, substituted a series of specific circumstances that had to be met for a Soviet citizen to be considered a refugee, like denial of a particular job because of religious beliefs.

Immigration experts believe that the agricultural amnesty program will probably color policy debates over other categories of aliens whose qualifications will be difficult to document, like the anti-Sandinista rebels of Nicaragua.

''One certain product'' of the agricultural amnesty program, Representative Schumer said, ''is that in developing immigration policies in the future, Congress will be much more wary of the potential for fraud and will do more to stop it.''

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 4½ minutes.

Mrs. FEINSTEIN. Mr. President, I would like to make a couple of comments.

I very much appreciate my service and Senator CORNYN's service on the same committee and have great respect for him and also for Senator MARTINEZ who has introduced the Hagel-Martinez plan with the best of motives. Senator CORNYN said we shouldn't throw up our hands. I am not throwing up my hands. I want strong borders. I voted for a fence. I believe we should put National Guard on the borders. We provide 12,500 additional Border Patrol, 2,500 border inspectors, over $1 billion of equipment for the border. We should have our border enforced. We should get the help of Mexico to enforce it.

Secondly, with this plan, there is no jumping in line ahead of anyone waiting legally for a green card.

The line begins for the orange card recipients, if such should ever be, when that line is expunged. What we do is recognize the reality, learn from the streets, understand what happens, and then try to build a comprehensive solution to deal with the real world—border control, increase practical numbers of visas, as well as providing a path for earned legalization for those people who are here now.

That path has several hurdles. It will weed out those who should not receive an orange card from those who should. It is an electronic process. It is doable, and it is practical. It recognizes that if you leave 4.4 million undocumented immigrants subject to deportation, whether it is this year or 4 years down the pike, you create another illegal pool of workers in this country, which I think destroys the comprehensive approach.

Therefore, I just want to say that this orange card has specific requirements that have to be met over a 6-year period of work, of learning to speak English, of paying a fine, of paying taxes, of work history. That has to be met on an annual basis, submitting work history receipts on an annual basis. The program financially takes care of itself with the fines and fees. I believe it is a practical, humane way to go which can, in fact, with the other components of the bill, create a comprehensive solution to immigration reform which has a chance to stop illegal immigration into our country.

I am concerned that should Hagel-Martinez become the law, we are back where we started with a huge group of people subject to deportation at one point or another. We know that creates the underground labor pool, which then creates the incentive for an addition to that underground labor pool. I believe the orange card proposal we have before the Senate now does not do that. But the devil is in the details of all of this. We will see.

How much time do I have remaining?

The PRESIDING OFFICER. Less than 1 minute 50 seconds.

Mr. KENNEDY. Mr. President, I yield whatever time I have to the Senator from California.

Mrs. FEINSTEIN. Mr. President, I would like to say one other thing. A lot of people come to me in desperate circumstances for private bills. I have tried to meet some of the families. What I have seen in these families is truly amazing. I have seen a legacy of work over a period of time that is amazing for any human being. I have actually seen families whose children are valedictorians of their high school class. I have seen them hide, but they pay their taxes, and they own a home. Some are even supervisors of companies.

If you look around America, the meatpacking industry, the chicken-processing industry, virtually all of the manufacturing and production, you will see these people as a dominant part of that workforce. I look at the great bread basket that is California, the largest agricultural State in the Union, and I know at least 600,000 of our workforce are undocumented and illegal. I know they come here because of the absence of any hope or opportunity or ability to make a decent living where they were living before.

I think this whole dialog we are having puts an enormous obligation on Mexico to begin to understand the needs of their people and do something to help them become economically more upwardly mobile because this is certainly the main problem that leads to the cross-border immigration that is illegal into our country. So we have tried to solve this with a comprehensive bill. I think it makes sense. It says to everybody that you have to earn this legalization. You have to get out there and work for at least 6 more years. You have to report in, but you have a card which identifies that you are in an adjusted status, you are not subject to deportation. You can raise your children. You can volunteer for community activities. You can become a constructive member of society. I believe that is worth a lot.

Enabling people to live to their fullest is worth a lot. I hazard a guess that there is not one person who is going to go home because of what we do in a bill. They are going to stay, they are going to continue, but the lifestyle is going to be clandestine, and they are never going to be able to reach their full potential. This amendment allows them to do so. I urge the Senate to vote yes.

I yield the floor and the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, it is with reluctance that I oppose the amendment offered by the Senator from California because if this amendment were to be adopted, I believe the very delicate and fragile coalition we have for this bill would fail. We are going to be looking for a cloture vote tomorrow, and if we were to go back to before the tenuous agreement that has been worked out to date with the three subdivisions—those here 5 years or more, those here 2 to 5 years, and those here less than 2 years—I think our efforts at cloture would fail and the prospects for failure of the bill would be very high.

We have structured the bill on a matter of principle, that those who are here the longest have the most roots and deserve the most consideration. The top tier was those who have been here 5 years or more. Selecting the date of January 7, 2004, as a cutoff date was done because that was the date of the President's speech on immigration reform. And anybody who came to the United States was on notice that they would be treated differently.

Under ideal circumstances, if we didn't have a tenuous coalition and we didn't have a conference prospectively with the House, I would be very sympathetic and inclined to support what the Senator from California has done. The reality is that it is going to be very difficult to find people who are here and not turn them into a fugitive class. The theory is that those people will not be able to find jobs and that they will, therefore, return.

But this legislation is on the edge of the ledge as it is. To keep the coalition intact—and I think that was the thrust of what Senator KENNEDY had to say, if I understood him, and I think others in the coalition are of the same mind—it is with reluctance that I oppose what the Senator from California has said. As a nation of immigrants, it would be nice to include everybody on the path to citizenship, but we face a lot of opposition, realistically, on the charge of amnesty, which I have dealt with on the floor. The bill is not amnesty; it is earned citizenship.

How much time do I have?

The PRESIDING OFFICER. Two minutes.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Under the previous order, all time having expired, the question is on agreeing to amendment No. 4087, as modified.

Mrs. FEINSTEIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) was necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 37, nays 61, as follows:

[Rollcall Vote No. 138 Leg.]

YEAS—37

Akaka	Feinstein	Menendez
Bayh	Harkin	Mikulski
Biden	Inouye	Murray
Bingaman	Jeffords	Obama
Boxer	Johnson	Reed
Cantwell	Kennedy	Reid
Chafee	Kerry	Salazar
Clinton	Kohl	Sarbanes
Conrad	Landrieu	Schumer
Dayton	Lautenberg	Stabenow
Dodd	Leahy	Wyden
Durbin	Levin	
Feingold	Lieberman	

NAYS—61

Alexander	DeWine	Murkowski
Allard	Dole	Nelson (FL)
Allen	Domenici	Nelson (NE)
Baucus	Dorgan	Pryor
Bennett	Ensign	Roberts
Bond	Frist	Santorum
Brownback	Graham	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Burr	Hagel	Snowe
Byrd	Hatch	Specter
Carper	Hutchison	Stevens
Chambliss	Inhofe	Sununu
Coburn	Isakson	Talent
Cochran	Kyl	Thomas
Coleman	Lincoln	Thune
Collins	Lott	Vitter
Cornyn	Lugar	Voinovich
Craig	Martinez	Warner
Crapo	McCain	
DeMint	McConnell	

NOT VOTING—2

Enzi	Rockefeller

The amendment (No. 4087), as modified was rejected.

Mr. REID. Mr. President, I move to reconsider the vote.

I move to lay that motion on the table.

Mr. SPECTER. The motion to lay on the table was agreed to.

DEATH OF SENATOR LLOYD BENTSEN

Mr. REID. Mr. President, I was just notified a few minutes ago that Lloyd Bentsen died. For those of us who have had the pleasure of serving with Lloyd Bentsen, this is a sad day. There was no one who better represented the Senate than Lloyd Bentsen. He looked like a Senator, he carried himself so well, and he acted like a Senator. He legislated like a Senator. He died at age 85. He was sick for a number of years. He was a person who had a great political record. He served in the House of Representatives for three terms, and he served in the Senate—he could have served as long as he wanted—and became Secretary of the Treasury during the Clinton administration. He, of course, ran for Vice President and he ran for President.

For me personally, he was such a guiding light. I can remember when I was elected to the Senate, and I was trying to get on the Appropriations Committee. I met in his hideaway.

This speaks about the way Lloyd Bentsen conducted his life. I was telling him why it would be good for me. I had been through a tough race. It was the most noted race in the cycle at that time. I was talking to him a lot about why it was important for me to get on the Appropriations Committee. He ended the discussion very quickly.

He said: It doesn't matter if it is good for you. I believe it is good for the Senate.

That was how he conducted his life. He was someone we all looked to. As a new Senator, I could talk to him with reverence. I can remember visiting with him when he was Secretary of Treasury. He told me how much he missed the Senate and how lonely it was down there and how he missed the collegiality of the Senate.

The State of Texas has had great Senators, but no Senator has ever been a better Senator than Lloyd Bentsen.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURR). Without objection, it is so ordered.

Mr. REID. Mr. President, with the consent of the majority leader, I ask unanimous consent that the time for the recess begin now, 12 minutes early.

The PRESIDING OFFICER. Is there objection?

Mr. FRIST. Mr. President, there will be no objection. We are making real progress and have begun discussing how we will handle the rest of the day and tomorrow as well. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:19 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Texas is recognized.

(The remarks of Mrs. HUTCHISON are printed in today's RECORD under ''Morning Business.'')

Mrs. HUTCHISON. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006—Continued

Mr. SPECTER. Mr. President, I ask unanimous consent that the Senator from Rhode Island be given 10 minutes to speak on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I rise to discuss S. 2611, the immigration bill we are debating this week. It has been a difficult debate with several difficult votes, but I believe this is one of the most important pieces of legislation we will address this year.

The status of immigrants in this country, including legal aliens, guest workers, and illegal aliens, has a profound impact on our economy, our labor force, and the quality of life of all of the Nation's residents. Clearly, our immigration system in terms of both its punitive measures and its benefits offered is in need of overhaul. The bill before us is not perfect, but it is a realistic approach to dealing with an issue that is important to so many Americans.

Rather than measures that sound good but are ineffective, this legislation is truly comprehensive immigration reform. It includes tough enforcement provisions directed at those who seek to come here illegally in the future and those who would hire illegal aliens. It contains provisions for guest workers that balance the needs of employers and the average American worker, and it offers a path to legalization to those who entered this country illegally but who have since been working hard and obeying the rules.

One of the most important sections of this bill relates to enforcement. Clearly, the continuous flow of illegal immigrants across our southern border in particular in search of higher paying jobs in the United States strains our Nation's labor market and resources such as hospitals and schools and law enforcement.

I note that while illegal immigration has been a significant problem since the 1980s, the problems have only worsened in the past 6 years. The 9/11 Commission gave the Bush administration a grade of C-minus on border security. The administration has simply lost control of the border. In the past decade, between 700,000 and 800,000 illegal immigrants have arrived in this country annually. Over 70 percent of these individuals are from Mexico or South America or from Central America. During the same period from 1995 to 2005, the number of Border Patrol agents increased from 4,876 to 11,106.

However, while the number of border agents increased dramatically during the Bush administration, the number of apprehensions at the border declined 31 percent from the last 4 years of the Clinton administration. In addition, approximately one-half of the 11 million illegal aliens in this country live in the 46 nonborder States, yet the average apprehension rate during the